Supreme Court Wrestles With Title IX

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Not content with forcing colleges and universities to eliminate hundreds of male athletic teams, the radical feminists are now trying to persuade the Supreme Court to create a private cause of action so that activist judges can make personnel decisions about who should coach the teams.

Title IX, the federal law that prohibits sex discrimination in educational institutions and sets forth the remedy for violations, does not expressly authorize individuals to bring lawsuits, and the Court made clear in a 2001 case that private causes of action can only be created by Congress, not by bureaucrats or judges. Nevertheless, the feminists have gone all out to try to reinterpret Title IX in ways never intended by the 1972 law.

The male plaintiff in this Title IX case heard by the Supreme Court on November 30, Roderick Jackson, was never "subjected to discrimination under any education program or activity" on the basis of his sex. His lawsuit merely claims that he was retaliated against by the school because he complained about the way the girls' team was treated (even though he retains his teaching job), and he wants the judges to make the Birmingham Board of Education reinstate him as coach of the girls' team.

Nothing in Title IX gives an employee job protection if his boss doesn't like his attitude or comments, and nothing in Title IX mentions retaliation. President Bush has repeatedly said that he "will not stand for judges who undermine democracy by legislating from the bench," but his lawyers are now asking the Supreme Court to legislate a brand new right.

Jackson could have sued because of a government employee's free speech rights, or if he had a legitimate job discrimination claim he could have taken action under our employment laws. But, no, this case is an appeal to activist judges to rewrite Title IX to make it even more powerful as a tool to punish men and all things masculine.

Jackson properly lost his case in the lower federal courts. Then, out of the blue, the Bush Administration intervened, asked the Supreme Court to take this case, argued strenuously on Jackson's side, and sought and received permission to address the Court in the oral argument even though the federal government is not a party to the case. Bush's nominee for Secretary of Education, Margaret Spellings, should be interrogated during her confirmation hearing as to the role she played in these most unusual actions.

The feminists in the Carter and Clinton administrations converted Title IX into a weapon to enforce gender quotas, thereby abolishing as many men's college athletic teams as possible. Long forgotten were the words of Title IX's author, Rep. Edith Green, who stated that the law is "exceedingly explicit so that the establishment of quotas would be prohibited."

Gender quotas are created by the invention of an informal regulation called the "proportionality test," which means that the male-to-female ratio on competitive sports teams must equal the male-to-female ratio of college enrollment. About 56 percent of college students today are women, yet only a fraction seek to compete in intercollegiate sports.

The senseless numbers game called proportionality has resulted in the elimination of hundreds of male teams: 171 colleges dropped wresting, 37 colleges dropped football, 27 dropped outdoor track, 25 dropped swimming, and 10 abolished ice hockey.

The abolition of wrestling teams proves that Title IX enforcement has nothing to do with equalizing funding or scholarships, since wrestling is one of the cheapest of all competitive sports. Eliminating wresting does nothing for women; it simply feeds the anti-masculine animus of the feminists.

President Bush had the chance to remedy this nonsense when he appointed a commission to study the problem. But he put feminists on the commission, and then chickened out, because the commission's report was not unanimous, and allowed the proportionality rule to remain.

The feminists assert that proportionality is only one part of a three-prong test. But proportionality is the only prong that matters because the college attorneys warn that the bean-counting approach is the only safe way to protect themselves against expensive feminist lawsuits.

It is an incontrovertible fact that men are more interested in competitive sports than women, and it is typical for colleges to have difficulty finding women to meet their quota targets. Despite the claim that Title IX helps women athletes, the numbers game has actually caused the elimination of traditional girls' teams such as gymnastics (100 teams have been abolished) in favor of large-squad-size sports such as rowing or horseback riding.

In ridiculing the senselessness of gender quotas, the University of Kansas college newspaper published this ironic comment. "College sports for women should be compulsory. Granted, many women may insist they don't want to play sports, but after generations of patriarchal oppression, it isn't realistic to think women really know what they want. The goal of perfectly equal gender ratios is more important than what anybody 'wants.'"